

1 MICHAEL J. SHEPARD (Bar No. 91281)

mshepard@kslaw.com

2 KING & SPALDING LLP

101 Second Street, Suite 2300

3 San Francisco, CA 94105

Telephone: (415) 318-1200

4 Facsimile: (415) 318-1300

5 RUSSELL F. MARTINEZ (Bar No. 317268)

rmartinez@kslaw.com

6 CORY L. BURLESON (Bar No. 322239)

cburleson@kslaw.com

7 KING & SPALDING LLP

633 West Fifth Street, Suite 1600

8 Los Angeles, CA 90071

Telephone: (213) 443-4355

9 Facsimile: (213) 443-4310

10 Attorneys for Defendant

JOHNNY EARL HENDERSON

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14
15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 JOHNNY EARL HENDERSON,

19 Defendant.

Case No. 3:19-CR-00116-RS

**STIPULATION AND ORDER TO
CONTINUE STATUS
CONFERENCE AND TO
EXCLUDE TIME**

Judge: Hon. Richard Seeborg

20
21
22
23 The parties file this stipulation asking the Court to vacate the status hearing scheduled in
24 this matter for June 9, 2020, and to set a status hearing and motions setting date on July 14, 2020,
25 or as soon thereafter as practicable. The parties jointly filed this stipulation in response to the
26 impact of COVID-19 and the shelter-in-place regulations that have remained in place since the last
27 status hearing on May 5, 2020. These regulations have continued to impact the ability of defense
28

counsel and the defense investigator to use the discovery ordered by the Court just prior to the shelter-in-place orders to gather court records and interview witnesses.

The parties therefore request that the time between June 9, 2020, and July 14, 2020, or as soon thereafter as this matter can be heard, be excluded from any time limits applicable under the Speedy Trial Act, 18 U.S.C. § 3161. An exclusion of time is appropriate because:

The Court may appropriately exclude time on ends-of-justice grounds. The country's public health interest in stemming the spread of COVID-19 outweighs the interest of the "public and the defendant in a speedy trial." *Id.* § 31671(h)(7)(A); *see also Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981) (finding no Speedy Trial Act violation where the district court granted an ends-of-justice continuance following the eruption of Mt. St. Helens). A failure to grant the requested continuance would unreasonably deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence because his review discovery has continued to be constrained by shelter-in-place orders. 18 U.S.C. § 3161(h)(7)(B)(iv). The Court may also exclude time for continuity of counsel for the same reasons. *Id.* Here, the shelter-in-place regulations in effect in the recent months have limited his ability to investigate and meet with witnesses.

DATED: June 3, 2020

Respectfully submitted,

By: /s/ Cory L. Burleson
 MICHAEL J. SHEPARD
 RUSSELL F. MARTINEZ
 CORY L. BURLESON
 Attorney for Defendant
 JOHNNY EARL HENDERSON

DATED: June 3, 2020

By: /s/ per email authorization
 DAVID WARD
 Assistant United States Attorney


ORDER

For the reasons stated above, the Court VACATES the status conference scheduled in this matter for June 9, 2020, and CONTINUES this case to July 14, 2020, or as soon thereafter as practicable, for a status hearing and motions setting date.

The Court also finds that exclusion from the time limits applicable under 18 U.S.C. § 3161, the period from June 9, 2020, through July 14, 2020, or as soon thereafter as practicable, is warranted and that the ends of justice served by the continuance outweigh the best interests of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

DATED: June 3, 2020


HONORABLE RICHARD SEEBORG
United States District Court Judge